

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 1998.

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EDWARD A. FAY, APPELLANT,

*vs.*

THE DISTRICT OF COLUMBIA (A MUNICIPAL  
CORPORATION).

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED MARCH 19, 1909.

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# In the Court of Appeals of the District of Columbia.

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No. 1998.

EDWARD A. FAY, Appellant,  
*vs.*  
THE DISTRICT OF COLUMBIA, &C.

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*a* Supreme Court of the District of Columbia.

At Law. No. 49896.

EDWARD A. FAY, Plaintiff,  
*vs.*  
THE DISTRICT OF COLUMBIA (a Municipal Corporation).

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed October 30, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49896.

EDWARD A. FAY, Plaintiff,  
*vs.*  
THE DISTRICT OF COLUMBIA (a Municipal Corporation), Defendant.

The plaintiff sues the defendant for money payable by the defendant to the plaintiff for that heretofore, to wit, July 12, 1905, plaintiff was the owner in fee simple of Lot numbered Fourteen (14) in Block numbered Eight (8), Washington Heights, in the District of Columbia, on which date the Commissioners of the District of Columbia instituted in the Supreme Court of the District of Columbia, holding a District Court, a proceeding for the condemnation of part of said lot, to wit, the East eight (8) feet by the full width of said lot, and the south sixteen (16) feet, by depth of ninety-two (92) feet, containing 1872 square feet of ground, for the purpose of a

public alley way, in which said cause such proceedings were had that an assessment of nine hundred and twenty dollars (\$920.00) was, by the Jury, made and levied against the remainder, to wit, the North thirty-four (34) feet front, by depth of ninety-two (92) feet, of plaintiff's said lot, as benefits thereto by reason of the proposed opening of said alley, and said assessment, being ratified and confirmed September 20, 1906, by said Court, became a lien thereon, and was afterwards, to wit, October 27, 1906, deducted by defendant from the damages or compensation allowed plaintiff in said proceeding for the said ground condemned therein. That at the time when said deduction was made, to wit, October 27, 1906, a petition had been filed by said Commissioners in said Court, the date of the filing thereof being July 24, 1906, seeking the condemnation of the aforesaid remainder of plaintiff's said lot for the extension of Kalorama Road, but no process or publication had been served or made under the last mentioned petition and plaintiff did not know that same had been filed or of the Act of Congress of June 29, 1906, authorizing the same. Thereupon, subsequent to October 27, 1906, proceedings were had by the defendant under said last mentioned petition resulting in the condemnation of said remainder of plaintiff's said Lot for the extension of said Kalorama Road, which said last proceeding was finally ratified and confirmed by said Court May 16, 1907. That the said proposed alley way, contemplated by the first above mentioned proceeding, sixteen feet in width off of eighteenth street, was abandoned by defendant, and never opened, as was also the rear eight feet of said lot, and the land condemned therefor was merged in that of Kalorama Road, so that the said remainder of plaintiff's said lot, to wit, the North 34 feet front by depth of 92 feet, never received the benefit for which it had been assessed the sum of Nine hundred and twenty dollars (\$920.00), as aforesaid, (and which said amount was deducted and retained by said defendant, as aforesaid, in payment of said assessment), by reason of its being condemned and taken by defendant May 16, 1907, in the condemnation proceeding last above referred to, without said alley being first opened, and by reason of the abandonment of the opening of said alley way.

Plaintiff has demanded of the defendant that it pay or refund to him the said amount of nine hundred and twenty dollars (\$920.00) but the defendant refused and still refuses to do so.

And the plaintiff claims the sum of Nine hundred and twenty dollars (\$920.00) with interest from the 27th day of October, 1906, and costs.

GEO. C. GERTMAN,  
JOHN RIDOUT,  
*Attorneys for Plaintiff.*

The defendant is to plead hereto on or before the Twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

GEO. C. GERTMAN,  
JOHN RIDOUT,  
*Attorneys for Plaintiff.*

*Pleas.*

Filed December 23, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49896.

EDWARD A. FAY

*v.*

THE DISTRICT OF COLUMBIA.

Now comes the defendant, the District of Columbia, and  
4 for pleas to the declaration herein filed, says:

1. That it never was indebted as alleged.

2. That it never promised in manner and form as alleged.

3. That by District Court proceeding No. 668 in this Honorable Court, which is hereby made part of this plea, part of lot fourteen, in block eight, of Washington Heights, belonging to the said plaintiff, was taken for a public alley, to wit, a strip of land eight feet wide by fifty feet long off the east end of said lot, and a strip sixteen feet wide by ninety-two feet long from the south side of said lot, being eighteen hundred and seventy-two square feet (1872) for which the said plaintiff was awarded the sum of eighteen hundred and seventy-two dollars (\$1872.00); that the jury sitting in said District cause found the remainder of the plaintiff's said lot to be benefited by the opening of the said alley in the sum of nine hundred and twenty dollars (\$920.00); that the difference between the said amounts was paid to the said plaintiff and he accepted the same, and the said land so taken in the said proceeding became, was and remained public property; that on the 5th day of August, 1907, the said plaintiff, by his attorney, appeared in the said District cause and petitioned the court to set aside the said assessment for benefits of \$920., that the District of Columbia made answer to the said petition and the said petition was denied and that no appeal or other proceeding has been taken in said cause to reverse said denial of the said petition; that by District Court proceeding No. 686, which made  
5 a part of this plea, the remaining part of the plaintiff's said lot fourteen was taken for the extension of Kalorama Road and the same became and remained a public highway; that the said portion of said lot remaining was thirty-four feet wide (34) and ninety-two (92) feet long, containing three thousand one hundred twenty-eight square feet and the said plaintiff was awarded as damages for the taking thereof the sum of three thousand five hundred ninety-seven 20/100 dollars (\$3597.20) which said sum was paid to the said plaintiff and he accepted the same; that in said proceeding the plaintiff moved the court to permit the jury sitting therein to take into consideration, in making their awards, the jury proceedings in District cause No. 668, which motion was denied by

the Court; and that no appeal or other proceeding has been taken in said District cause No. 686 to reverse or set aside the said ruling of the court denying the said motion.

Further defendant says that there has been no appeal in either of the said District causes No. 668 and 686 from the verdicts of the juries awarding damages and benefits therein or from the orders of the court confirming the said verdicts.

4. For a further plea defendant says there has been a former adjudication on the claim of the plaintiff herein, in District causes Nos. 668 and 686, wherein was determined the same matters of benefits, now claimed herein, between the same parties and that the judgment in the said District causes was rendered on the merits by a court of competent jurisdiction.

E. H. THOMAS,  
*Attorney for Defendant.*

6

*Joinder of Issue.*

Filed January 3, 1908.

In the Supreme Court of the District of Columbia.

At Law. #49896.

EDWARD A. FAY

vs.

THE DISTRICT OF COLUMBIA.

The plaintiff joins issue on the defendant's first, second and fourth pleas.

GEO. C. GERTMAN,  
JOHN RIDOUT,  
*Attorneys for Plaintiff.*

*Motion to Strike Out Third Plea.*

Filed January 3, 1908.

In the Supreme Court of the District of Columbia.

Law. #49896.

EDWARD A. FAY

vs.

THE DISTRICT OF COLUMBIA.

Now comes the plaintiff by his Attorneys and moves the Court to strike out the defendant's third plea and for grounds of said motion says—



1. That said plea is incomplete in its averments concerning District Court proceedings No-. 668 and 686.
2. That the said plea is indefinite and uncertain.
3. That the said plea is argumentative.

GEO. C. GERTMAN,  
JOHN RIDOUT,  
*Attorneys for Plaintiff.*

7 Mr. E. H. Thomas, Corporation Counsel, D. C.

DEAR SIR: Please take notice that the above motion will be submitted to the Court on Friday, January 10th, 1908, at ten o'clock, a. m., or as soon as counsel can be heard.

GEO. C. GERTMAN,  
JOHN RIDOUT,  
*Attorneys for Plaintiff.*

Supreme Court of the District of Columbia.

FRIDAY, *January 17th*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

\* \* \* \* \*

No. 49896. At Law.

EDWARD A. FAY, Plaintiff,  
*vs.*

THE DISTRICT OF COLUMBIA, Def't.

Upon consideration of plaintiff's motion filed herein by his attorneys Messrs. Geo. C. Gertman and John Ridout, to strike out the defendant's third plea, it is ordered that said motion be, and the same is hereby granted and said plea is hereby stricken out.

8 *Notice of Trial.*

Filed February 17, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 49896.

EDWARD A. FAY, Plaintiff,  
*vs.*

THE DISTRICT OF COLUMBIA, Defendant.

George C. Gertman and John Ridout, Attorneys for Plaintiff.

Edward H. Thomas and Francis H. Stephens, Attorneys for Defendant.

Last pleading filed January 3rd, 1908.

\* \* \* \* \*

Take notice that the issue joined in this cause will be tried at the next term of this Court.

GEO. C. GERTMAN,  
JNO. RIDOUT,  
*Attorneys for Plaintiff.*

To Messrs. Edward H. Thomas and Francis H. Stephens, Attorneys for Defendant.

Copy of above notice accepted this 17th day of February, 1908.

F. H. STEPHENS.

*Memorandum.*

January 12, 1909.—Waiver of trial by jury and finding by court for defendant.

9 Supreme Court of the District of Columbia.

FRIDAY, *January 22d*, 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Claibagh, Chief Justice, presiding.

\* \* \* \* \*

No. 49896. At Law.

EDWARD A. FAY, Plaintiff,

*vs.*

THE DISTRICT OF COLUMBIA (a Municipal Corporation), Defendant.

It appearing that, under the Rule of Court, judgment should be entered herein, on the finding of the court, it is so ordered: therefore, it is considered and adjudged, that the plaintiff herein recover of defendant herein, nothing, by this action, that the defendant go hereof without day, be for nothing held, and recover of plaintiff its costs of defense, to be taxed by the clerk, and have execution thereof.

From the foregoing, the plaintiff by his attorney, in open court, notes an appeal to the Court of Appeals; whereupon, the penalty of a bond for costs is fixed in the sum of One Hundred Dollars.

*Memorandum.*

February 1, 1908.—Appeal bond approved and filed.

10 Supreme Court of the District of Columbia.

WEDNESDAY, *February 24th*, 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

No. 49896. At Law.

EDWARD A. FAY, Plaintiff,

*vs.*

THE DISTRICT OF COLUMBIA, Defendant.

Comes now the plaintiff by his attorneys and presenting to the Court, the Bill of Exceptions taken at the trial of this cause, prays that the same be signed and made of record *nunc pro tunc*, which is hereby so ordered and accordingly done.

11 *Bill of Exceptions.*

Filed February 25, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 49896.

EDWARD A. FAY, Plaintiff,

*vs.*

THE DISTRICT OF COLUMBIA, Defendant.

Be it remembered that at the trial of this case on the Twelfth day of January, 1909, before the Honorable Harry M. Clabaugh, Chief Justice of the Court, without a jury, the plaintiff to maintain the issues on his part joined, produced in evidence an agreed statement of facts, duly agreed to by the plaintiff and defendant through their respective Counsel, which is in the words and figures, following, to wit:

Filed January 12, 1909.

JOHN R. YOUNG, *Clerk.*

In the Supreme Court of the District of Columbia.

Law. No. 49896.

EDWARD A. FAY

*vs.*

THE DISTRICT OF COLUMBIA.

*Stipulation.*

12 It is mutually stipulated and agreed by the plaintiff and defendant that the following facts are admitted as true and need not be proved; that this case shall be submitted thereon, together with the pleadings, herein, and that the Court shall,

in connection therewith, consider so much of the records and proceedings in District Court Causes 668 and 686, of this Court, as may be offered by respective counsel, together with the laws applicable to this case and said District Court causes.

*First.* On July 12, 1905, plaintiff was the owner in fee simple of Lot 14, block 8, Washington Heights, in said District, fronting 50 feet on east side of 18th street, Northwest, and having depth of 100 feet, and being from two to three feet above the grade of 18th street. Said lot was not built upon nor fenced in but had sidewalk and curb in front thereof.

*Second.* On July 12, 1905, defendant, through its Commissioners, pursuant to Act of Congress of February 23, 1905, Secs. 1608 *et seq.* of Code, filed petition in Cause 668 seeking the condemnation, *inter alia*, of the south 16 feet by depth of 92 feet, and the east 8 feet, of said lot, for a public alley, and proceedings were had therein resulting in \$1872.00 being awarded plaintiff as compensation or damages for said part of said lot, and, the jury in that cause (668) found that the remainder of plaintiff's said lot, the north 34 feet by depth of 92 feet, by reason of the opening of such alley as contemplated by that proceeding, would be benefitted \$920.00, and, accordingly assessed that amount against same as benefits. Said award and assessment was confirmed by the Court September 20, 1906, and said assessment thereby became a lien in favor of defendant on said remainder of said lot.

13 On October 27, 1906, defendant deducted said assessment of \$920.00 from said compensation \$1872.00 and paid plaintiff the difference \$950.00.

*Third.* On July 24, 1906, defendant, through its Commissioners, pursuant to Act of Congress of June 29, 1906, filed petition in said cause No. 686 seeking the condemnation, *inter alia*, of the said remainder of plaintiff's said lot for the purpose of extension of Kalorama Road with a width of 50 feet; that Kalorama Road at that time extended only East to 18th street. That process or publication was served or made therein upon the plaintiff herein on March 18, 1907, and plaintiff did not know on October 27, 1906, of the pendency of Cause 686 nor of the aforesaid Act of June 29, 1906, for the extension of said Kalorama Road.

That subsequent to October 27, 1906, proceedings were had by defendant in said cause 686 resulting in plaintiff being awarded compensation or damages of \$3597.20 for said remainder of said lot, and, the Jury in that cause assessed benefits against the lot of plaintiff's lying north of said 34 feet. This proceeding (686) was confirmed by the Court, over plaintiff's objection, May 16, 1907.

*Fourth.* In said cause No. 686, at the hearing thereof, before the Jury, plaintiff requested the Court to allow him to offer in evidence the proceedings in Cause No. 668 in so far as they concerned plaintiff's said lot, and to instruct the Jury that it should add to the compensation to be awarded plaintiff in that Cause for his said remainder of said lot the said \$920.00 deducted by defendant as aforesaid, which request was objected to by defendant and refused by the Court.

14       *Fifth.* On the fifth day of August, 1907, plaintiff moved the Court, in Cause 668, to vacate its decree confirming the assessment therein so far as plaintiff's said lot was concerned, to which motion the defendant objected for the reason among others that the Court, at that late date, was without jurisdiction to entertain the same, and said motion was overruled by the Court.

*Sixth.* Thereupon plaintiff filed this suit to recover \$920.00 from defendant on the grounds claimed in the Declaration and particulars of demand; demand upon defendant having been first made therefor by plaintiff and refused.

*Seventh.* That the portion of plaintiff's said lot 14 condemned in Cause 668 is now, with the said remainder of said lot condemned in Cause 686, merged in and known as Kalorama Road, 50 feet in width, and, at the time of the filing of this suit, nothing had been done by defendant to change in anywise the physical condition of the land condemned in Cause 668 from the condition existing on July 12, 1905, so as to make it a public thoroughfare, but it was and remained ungraded and unpaved, and the curbstone and pavement in front thereof had not been altered to afford access thereto or thereover for vehicles, but, since the institution of this suit, said Kalorama Road has been opened and physical changes made on said property by grading, paving and laying of curbs, and removal of sidewalk and curb on 18th street, etc., and is now a public thoroughfare fifty feet in width known as Kalorama Road.

*Eighth.* The plaintiff and defendant respectively reserve the right to except to the verdict or judgment to be entered herein,  
15       and the right to appeal from such judgment or verdict.

GEORGE C. GERTMAN,  
JOHN RIDOUT,  
Attorneys for Plaintiff.  
EDWARD H. THOMAS,  
Attorney for Defendant.

The foregoing, together with the proceedings annexed hereto as part hereof marked "Plaintiff's Exhibits 'A,' 'B,' 'C' and 'D' was all the evidence adduced by the plaintiff, and thereupon the plaintiff rested.

Whereupon the defendant gave in evidence the proceedings annexed hereto as part hereof marked "Defendant's Exhibits A, B, C, D, E, F, G, H," and thereupon the defendant rested; the foregoing being all the evidence in the case.

Whereupon the plaintiff by his Counsel moved the Court to declare and find as a matter of law upon the foregoing agreed statement of facts and other evidence that the plaintiff was entitled to a judgment against the defendant for the sum of Nine hundred and twenty dollars, but the Court overruled said motion, to which ruling of the Court overruling said motion, the plaintiff, by his Counsel, then and there duly excepted, thereupon the Court found the issues joined between the parties in favor of the defendant, to which finding the plaintiff, by his Counsel, then and there duly excepted. Counsel for the plaintiff now prays the Court to sign the foregoing

bill of exceptions in order that the same may be made a matter of record, which is accordingly done this 24th day of February, 1909, now and for the 12th day of January, 1909.

HARRY M. CLABAUGH,  
*Chief Justice.*

E. H. THOMAS,  
F. H. S.,  
*Attorney for Defendant.*

Settled by Consent:

GEORGE C. GERTMAN.  
JOHN RIDOUT,  
*Attorneys for Plaintiff.*

16

"PLAINTIFF'S EXHIBIT A."

In the Supreme Court of the District of Columbia, Holding a  
District Court.

District Court, No. 668.

*In re* THE OPENING OF AN ALLEY THROUGH PART OF BLOCK 12,  
MERIDIAN HILL, AND PART OF BLOCK 8, WASHINGTON HEIGHTS,  
IN THE DISTRICT OF COLUMBIA.

*Amended and Supplemental Verdict.*

We, the jury in the above-entitled cause, hereby find the following amended and supplemental verdict, and award of damages for and in respect of the land to be condemned and taken for the opening of an alley through part of Block numbered Twelve (12), Meridian Hill, and part of Block numbered Eight (8), Washington Heights, in the District of Columbia, as shown on the plat or map filed with the petition in this cause, amounting to the sum of Nine Thousand Six Hundred and Twenty-two dollars and Forty-five cents (\$9,622.45), as set forth in Schedule No. 1, hereto annexed as part hereof.

And we, the jury aforesaid, hereby find the amount of benefits accruing by reason of the opening of said alley to be the sum of Ten thousand, One hundred and twelve dollars and seventy cents (\$10,112.70), said sum being an amount equal to the aforesaid amount of damages awarded for and in respect of the land to be condemned for the opening of said alley, together with the expenses of these proceedings.

17

And we, the jury aforesaid, find that the lots or parts of lots or parcels of land which will be benefited by the opening of an alley in said Blocks, as aforesaid, are the lots or parts of lots and parcels of land, mentioned and described in Schedule No. 2, hereto annexed as part hereof; and we find that the several lots or parts of lots or parcels of land mentioned in said Schedule No. 2, will be benefited to the extent of the respective amounts mentioned and set forth in said Schedule No. 2, and we hereby assess against the said lots or parts of lots or parcels of land, respectively, as and

for benefits as aforesaid, the several amounts mentioned, specified and set forth in said Schedule No. 2.

Witness our hands and seals, this 27th day of July, A. D. 1906.

JOHN S. SWORMSTEDT. [SEAL.]

EUGENE J. TIGHE. [SEAL.]

J. B. McLAUGHLIN. [SEAL.]

FRANK B. METZEROTT. [SEAL.]

WM. P. VAN WICKLE. [SEAL.]

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"PLAINTIFF'S EXHIBIT B."

Filed Sep. 20, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a  
District Court.

District Court, No. 668.

*In re* THE OPENING OF AN ALLEY THROUGH PART OF BLOCK 12,  
MERIDIAN HILL, AND PART OF BLOCK 8, WASHINGTON HEIGHTS,  
IN THE DISTRICT OF COLUMBIA.

On motion of the petitioners, the Commissioners of the District of Columbia, and, it appearing to the Court that no objection or exceptions have been filed to the Amended and Supplemental verdict of the jury returned herein on the 27th day of July, A. D. 1906, it is, by the Court, this 20th day of September, A. D. 1906, ordered, that the said verdict, award and assessment be, and the same is, hereby in all respects finally ratified and confirmed and that the land described in the petition as being necessary for the opening of an alley through part of Block 12, Meridian Hill and part of Block 8, Washington Heights, in the District of Columbia, be, and the same is hereby adjudged condemned for the purpose aforesaid.

By the Court:

HARRY M. CLABAUGH,  
*Chief Justice.*

19

"PLAINTIFF'S EXHIBIT C."

Filed Jul- 24, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a  
District Court.

District Court, No. 686.

*In re* THE EXTENSION OF KALORAMA ROAD FROM 18TH STREET TO  
CHAMPLAIN STREET, IN THE DISTRICT OF COLUMBIA.

To the Supreme Court of the District of Columbia, sitting as a  
United States District Court:

The petition of Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners of the District of Columbia, respectfully represents:

1st. That by an Act of Congress, approved June 29th, 1906, entitled "An Act authorizing the Extension of Kalorama Avenue, northwest," your petitioners are authorized and directed within thirty days after the passage of said Act to institute in the Supreme Court of the District of Columbia, under and in accordance with the provisions of Sub-chapter 1, of Chapter XV of the Code of Law for the District of Columbia, a proceeding *in rem* to condemn the land that may be necessary for the extension of Kalorama Road from 18th street to Champlain street, northwest, in the District of Columbia, with a width of fifty feet, and your petitioners under the authority of the said Act of Congress and in accordance with the provisions of said Sub-chapter 1, of the Code, file this petition.

20      2d. That a map or plan showing the land to be taken for the said extension of the said Kalorama Road, is hereto annexed as part of this petition, marked Exhibit D. C. No. 1.

3d. That the land necessary for the said extension of the said Kalorama Road, (together with the names and residences of the owners thereof, as far as the same can be ascertained) is particularly described as follows:

Parcel No. 1. All of lot numbered fourteen (14), in Block numbered Eight (8) in the Commissioners' Subdivision of Washington Heights, containing 5000 square feet. Owner, Edward A. Fay. Residence, Kendall Green, northeast, District of Columbia.

Parcel No. 2. The south 30 feet of lot numbered ten (10) in block numbered twelve (12), Meridian Hill, containing 300 square feet. Owner, Luther A. Swartzell, residence, 1112 Rhode Island Avenue, northwest, District of Columbia.

Parcel No. 3. The north 20 feet of lot numbered nine (9) in Block numbered twelve (12), Meridian Hill, containing 2000 square feet. Owner, Charles H. Wiltsie, Residence, Rochester, New York.

4th. That the aforesaid Sub-chapter One of Chapter XV of the Code of Law for the District of Columbia, provides amongst other things that of the amount found to be due and awarded as damages for and in respect of the land to be condemned for the opening, extension, widening or straightening of any street plus the costs and

21      expenses of the proceeding, such amount shall be assessed by the jury as benefits and to the extent of such benefits, against the lots, pieces or parcels of land on each side of said street, and against any and all other lots, pieces or parcels of land which the jury may find will be benefited by the said opening, extension, widening, or straightening, as the jury may find said lots, pieces or parcels of land will be benefited; and in determining the amount to be assessed against said lots, pieces, or parcels of land the jury shall take into consideration the respective situations and topographical conditions of said lots, pieces or parcels of land and the benefits and advantages they may severally receive from the opening, extension, widening or straightening of the street as aforesaid.

Wherefore, the premises considered, and in accordance with the further provisions of Sub-chapter One of Chapter XV of the Code of Law for the District of Columbia, your petitioners pray as follows:



*First.* That this Honorable Court may cause public notice of not less than twenty (20) days to be given of the institution of this proceeding, by advertisement in three daily newspapers published in the District of Columbia, which notice shall warn and require all persons having any interest in the proceeding to appear in Court at a date to be named in said notice, and to continue in attendance until the Court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits by the jury; and shall cause a copy of said notice to be served by the United

22 States Marshal for the District of Columbia, or his deputies upon such owners of the land to be condemned as can be found by said Marshal, or his deputies, within the District of Columbia, and upon the tenants and occupants of the same.

*Second.* That the said Marshal may be directed to summon a jury of five experienced, judicious, disinterested men, who shall be free-holders within the District of Columbia, not related to any person interested in this proceeding and not in the service or employment of the District of Columbia or of the United States, to ascertain the damages each owner of land to be taken may sustain by reason of the extension of the aforesaid Kalorama Road and the condemnation of the land necessary for said extension, and to assess the benefits resulting therefrom; in accordance with the provisions of the aforesaid Act of Congress and the aforesaid Sub-Chapter One of the Code.

*Third.* That such other and further orders may be passed and proceedings had herein as are contemplated by the aforesaid Act of Congress, to the end that the aforesaid land, may be condemned and secured for the extension of said Kalorama Road as aforesaid.

HENRY L. WEST,  
JOHN BIDDLE,

*Commissioners of the District of Columbia.*

E. H. THOMAS,  
JAS. FRANCIS SMITH,  
*Attorneys for Petitioners.*

DISTRICT OF COLUMBIA, ss:

23 Henry B. F. Macfarland, Henry L. West and John Biddle, on oath say: that they are the Commissioners of the District of Columbia and the petitioners in the above entitled cause; that they have read the foregoing petition by them subscribed and know the contents thereof; that the facts therein stated upon their personal knowledge are true, and those stated upon information and belief they believe to be true.

HENRY L. WEST.  
JOHN BIDDLE.

Subscribed and sworn to before me this 23rd day of July, A. D. 1906.

[NOTARIAL SEAL.]

WILLIAM TINDALL,  
*Notary Public, D. C.*

Filed Feb. 21, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a  
District Court.

District Court, No. 686.

*In re* EXTENSION OF KALORAMA ROAD FROM EIGHTEENTH STREET  
TO CHAMPLAIN STREET, IN THE DISTRICT OF COLUMBIA.

The petition of Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners of the District of Columbia, respectfully represents:

1. That heretofore to wit on the 24th day of July, A. D., 1906, the Commissioners of the District of Columbia, petitioners herein, filed their original petition praying the condemnation of certain land necessary for the extension of Kalorama Road from Eighteenth Street to Champlain Street in the District of Columbia, under the authority of an Act of Congress set out in said original petition, which said petition contained a particular description of the land to be condemned for the said extension.

2. That since the filing of said original petition your petitioners have acquired by condemnation proceedings a certain portion of the land therein described, said portion being a part of the land condemned for the purpose of opening an alley in block eight Washington Heights and block twelve, Meridian Hill, in condemnation proceedings Number 668 District Court.

3. Wherefore, by leave of Court first obtained, the petitioners amend their said original petition as follows:

25 By striking out all that portion of the said original petition which purports to describe the land necessary for the extension of Kalorama Road from Eighteenth Street to Champlain Street in the District of Columbia, and inserting in lieu thereof the following:

Part of lot 14, Block 8, Washington Heights, now assessed as Lot 820, square 2560, beginning for the same at the northwest corner of said lot, and running thence with the north line of the said lot in an easterly direction 92 feet, thence at right angles to said line in a southerly direction 34 feet, thence at right angles in a westerly direction 92 feet to the west line of said lot, and thence with said west line in a northerly direction 34 feet to the place of beginning; containing 3128 square feet.

Owner—Edward A. Fay.

Residence, Kendall Green, N. E. District of Columbia.

Parcel No. 2—Part of lot 10, Block 12, Meridian Hill, now assessed as lot 833, square 2560, beginning for the same at the southeast corner of said lot, and running thence with the south line of said lot in a westerly direction 92 feet, thence at right angles to said lot

in a northerly direction 30 feet, thence in an easterly direction and parallel to the south line of said lot 92 feet, and thence in a straight line to the place of beginning; containing 2760 square feet.

Owner—Luther A. Swartzell.

Residence, No. 1112 Rhode Island Avenue N. W., District of Columbia.

4. That a map or plan showing the land to be taken for the said extension of the said Kalorama Road, according to this amended description is hereto annexed as part hereof, Marked Exhibit, D. C. No. 2.

5. Your petitioners renew the averments of their said original petition, except as hereby amended, and the prayers thereof.

HENRY B. F. MACFARLAND,

HENRY L. WEST,

JOHN BIDDLE,

*Commissioners of the District of Columbia.*

E. H. THOMAS,

J. F. SMITH,

*Attorneys for Petitioners.*

26 DISTRICT OF COLUMBIA, ss:

Henry B. F. Macfarland, being duly sworn on oath says that he is President of the Board of Commissioners of the District of Columbia, the petitioners herein; that he has read the foregoing amendment to the original petition herein, signed by the said Commissioners; that the facts therein stated are true to the best of his official knowledge and belief.

HENRY B. F. MACFARLAND.

Subscribed and sworn to before me this twenty first day of February, A. D. 1907.

[NOTARIAL SEAL.]

WILLIAM TINDALL,

*Notary Public, D. C.*

27 DEFENDANT'S EXHIBIT "A."

Filed Aug. 5, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a District Court.

District —, No. 668.

*In re* OPENING OF AN ALLEY IN BLOCK 12, MERIDIAN HILL, AND BLOCK 8, WASHINGTON HEIGHTS.

To the Supreme Court of the District of Columbia, holding a District Court:

Edward A. Fay, respectfully represents:

1st. Heretofore, July 12, 1905, in this cause, the Commissioners of the District of Columbia filed suit for the condemnation of land

for an alley sixteen feet in width through parts of Blocks 8 and 12 Washington Heights and Meridian Hill, as shown by petition and plat filed herein, and pursuant thereto the south 16 feet and the east 8 feet of Lot 14 in Block 8, owned by respondent, was condemned for the alley and damages \$1872.00 allowed therefor. The remaining north 34 feet of said Lot the Jury in this cause found would be benefitted when said alley was in reality opened and thus assessed benefits thereon to amount of \$920.00. Petitioner prays that said Petition and award of Jury be read and considered as part of this petition. Said award was filed November 13, 1905, confirmed on January 5, 1906, but exceptions thereto were filed and on July 21, 1906, an amended and supplemental award was filed which was confirmed September 20, 1906, without notice by order *nisi* or otherwise to this petitioner.

28     Thereupon petitioner was notified by the District of Columbia authorities to call at the District Building and execute voucher and receive the amount allowed him for said property condemned as aforesaid. Petitioner called as requested and learned that the Act under which the proceeding was instituted required the deduction of benefits assessed against the remainder thereof, to wit, \$920.00, from the said damages, and, finally, he accepted said damages less said benefits though under protest, not at that time knowing of the proceeding hereinafter referred to.

2nd. On July 24, 1906, before the award in this case was finally confirmed, said Commissioners filed suit in District Court case No. 686 for the condemnation, among other property, of the remaining 34 feet of said Lot 14 by its full depth—the very property which the Jury in this case found would be benefitted to the extent of \$920 if the alley was opened—all of which is shown by petition and plat filed in said District Case No. 686 which are prayed may be read and considered as part hereof.

Upon the hearing of testimony in this latter case this Petitioner prayed the Court to allow him to adduce in evidence the verdict and proceedings of this case and to instruct the Jury that it might consider the proceedings in this case and allow to petitioner as part of his damages the \$920.00 deducted from him as aforesaid, all of which was refused.

3rd. This petitioner therefore respectfully shows to the Court that he is wronged in his right of property by reason of these two proceedings in that he has been compelled to bear an assessment  
29     of \$920.00 which benefit never accrued to his said property and the alley has never been opened nor in reality existed.

Petitioner therefore prays:

That a rule to show cause be issued in this cause directed to the Commissioners of the District of Columbia to show cause herein on a day to be determined, why the order of confirmation in so far as said property is concerned, and the said assessment of benefits of \$920.00 as set forth herein levied against said north 34 feet front, by full depth, of said Lot 14, fully described in this proceeding, should not be vacated, and that upon the answering of said Rule

that the Court set aside said order of confirmation and vacate said assessment.

2. That he may have such other and further relief herein as the Court may seem proper.

EDWARD A. FAY,  
By GEO. C. GERTMAN, *Att'y.*

30

## DEFENDANT'S EXHIBIT "B."

Filed Aug. 5, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a  
District Court.

District —, No. 668.

*In re* OPENING OF AN ALLEY IN BLOCK 12, MERIDIAN HILL, AND  
BLOCK 8, WASHINGTON HEIGHTS.

Upon consideration of the Petition of Edward A. Fay, filed herein this day, it is by the Court, this Fifth day of August, 1907, ordered and decreed that the Commissioners of the District of Columbia show cause herein on Friday, August 9th, 1907, if any they have, why the prayers of said Petition should not be granted, provided a copy hereof be served on or before Tuesday, August 6th, 1907.

JOB BARNARD, *Justice.*

31

## DEFENDANT'S EXHIBIT "C."

Filed Aug. 9, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Sitting as a  
District Court.

District Court, No. 668.

*In re* OPENING OF AN ALLEY IN BLOCK 12, MERIDIAN HILL, AND  
BLOCK 8, WASHINGTON HEIGHTS.

The answer of the Commissioners of the District of Columbia to the petition of Edward A. Fay, filed herein, respectfully shows as follows:

1. Answering paragraph one, respondents say that the proceedings were had for the opening of the said alley and that 1872 feet of petitioner's land were taken and he was awarded \$1872 for the same as damages; that the said order *nisi* was duly published, will appear by reference to the proceedings herein, and petitioner was charged with notice thereof; further respondents say the records of the District Offices contain no protest by the said petition, as alleged; respondents say also, that the said petitioner filed no exceptions to

the verdict and award of the jury herein, and made no objections to the confirmation of the same.

2. Respondents admit the allegations of paragraph two.

3. Answering paragraph three of the said petition, respondents say that the said petitioner has suffered no wrong or injury or been deprived of any legal right by reason of the proceedings herein or in District Court case No. 686; that there is nothing in the  
32 latter case, which respondents pray to be read as a part hereof, to show that the jury therein did not award petitioner damages as of the enhanced value of his lot as benefited by the opening of the said alley in District Court case No. 668; that on the contrary; the jury in No. 668 awarded petitioner damages for the land taken at the rate of one dollar a foot, and the jury in No. 686 awarded damages at a higher rate, as will appear by reference to the verdicts in the two cases.

4. Further answering the said petition, your respondents say that the petitioner herein has no right to appeal from the decision of the Court sitting in District Court Case No. 686 to the Court sitting in this case; that if the said petitioner has suffered any legal injury or wrong by reason of the Court in No. 686 refusing to allow the verdict in this case to be considered by the jury in said case No. 686, the petitioner's remedy was by appeal in said case No. 686 to the Court of Appeals, and there is no power or authority of the Court sitting in this case to review the proceedings or orders had or passed in said cause No. 686; and respondents pray the benefit of these matters in the same manner and to the same extent as if they had specifically demurred to the said petition by reason of the said matters.

HENRY L. WEST,  
JAY J. MORROW,

*Commissioners of the District of Columbia.*

E. H. THOMAS,  
*Corporation Counsel.*

DISTRICT OF COLUMBIA, ss:

33 Henry L. West, being duly sworn, says he is one of the Commissioners of the District of Columbia and has read the answer subscribed by him as such Commissioner and knows the contents thereof; that the matters therein stated are stated on official information and belief and he believes the same to be true.

HENRY L. WEST.

Subscribed and sworn to before me this 9th day of August, 1907.

WILLIAM TINDALL,  
*Notary Public.*

[NOTARIAL SEAL.]

34

## DEFENDANT'S EXHIBIT "D."

Filed Aug. 9, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Dist. Ct., No. 668.

*In re* OPENING OF AN ALLEY IN BLOCK 12, MERIDIAN HILL, AND  
BLOCK 8, WASHINGTON HEIGHTS.

On hearing the petition — Edward A. Fay to set aside the order of confirmation of the verdict of the jury herein, and the answer of the Commissioners of the District of Columbia thereto, after argument by counsel and consideration by the Court,—

It is this 9th day of August, 1907, adjudged, ordered and decreed that the said petition, and the prayers thereof, be and the same are hereby denied and refused.

JOB BARNARD, *Justice*.

35

## DEFENDANT'S EXHIBIT "E."

Filed June 15, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a  
District Court.

No. 686.

*In re* THE EXTENSION OF KALORAMA ROAD FROM 18TH STREET TO  
CHAMPLAIN STREET, IN THE DISTRICT OF COLUMBIA.

This respondent Edward A. Fay, by his Attorney George C. Gertman, hereby excepts to the award filed herein, May 16, 1907, in so far as his property, part Lot 14 in Block 8 Washington Heights, now assessed as Lot 820 in Square 2560, is concerned and for grounds of exception says:

1. Heretofore, to wit, July 12, 1905, in District Court case No. 668, the Commissioners of the District of Columbia filed suit for the condemnation of an alley, 16 feet in width, through part of Blocks 8 and 12 Washington Heights, as shown by plat or map filed in that proceeding, whereby the south 16 feet and the east 8 feet of said lot 14 in Block 8 owned by this respondent was condemned for the alley and \$1872.00 allowed therefor, and the remaining north 34 feet of this lot 14, by its full depth, was, by the Jury in that cause, assessed \$920.00 benefits which it found that property would receive by reason of the opening of said alley, and this respondent respectfully prays that the finding of the Jury in that cause be read and considered by the Court as part of this exception. That award was



36 filed November 13, 1905, and on January 5, 1906, was confirmed, but, on July 21, 1906, an amended and supplemental award was filed, which, so far as this respondent's property was concerned, did not change or alter the original award, which latter award was finally confirmed September 20, 1906, without any notice by order *nisi* or otherwise first being given this respondent.

2. Upon the ratification of said award, as aforesaid, respondent was notified of the same and directed to call upon the proper Officer of the District of Columbia and execute voucher and receive the amount allowed him as damages, less the said amount of \$920, the assessment for benefits, as aforesaid, which he accordingly did, not knowing at that time of the subsequent proceeding hereinafter referred to.

3. On July 24, 1906,—before the final award in said District case No. 668 was confirmed,—the District Commissioners filed this present suit for the condemnation, among other property, this respondent's remaining 34 feet of said lot 14 by its full depth—the very property which had just, by the prior proceedings been assessed \$920.00 benefits—as shown by petition and plat filed herein, for the extension of Kalorama Avenue to Champlain street. On February 21, 1907,—no action being taken by the Petitioners after July 24, 1906,—the said Commissioners filed in this cause their amended petition.

On this amended and original Petition testimony was heard by the Jury duly appointed herein and on May 16, 1907, the Jury filed herein its award whereby respondent was awarded as damages for said remainder of said Lot 14 containing 3128 square feet the sum of \$3597.20.

37 4. Respondent respectfully represents that he is wronged in his right of property by reason of these two proceedings in that the said 34 feet of said Lot 14 remaining and condemned in this proceeding is compelled to bear an assessment of \$920.00 levied against it as benefits in said District case No. 668 notwithstanding those benefits have never accrued thereto and the alley has never been opened or in reality exists, and therefore said assessment has been unjustly deducted from said damages in said District case No. 668.

5. Therefore respondent avers that the Court erred in not allowing Counsel for respondent to adduce in the trial of this case the proceedings in and verdict of the Jury in said District Case No. 668, and also in not instructing the Jury that it might consider said proceedings.

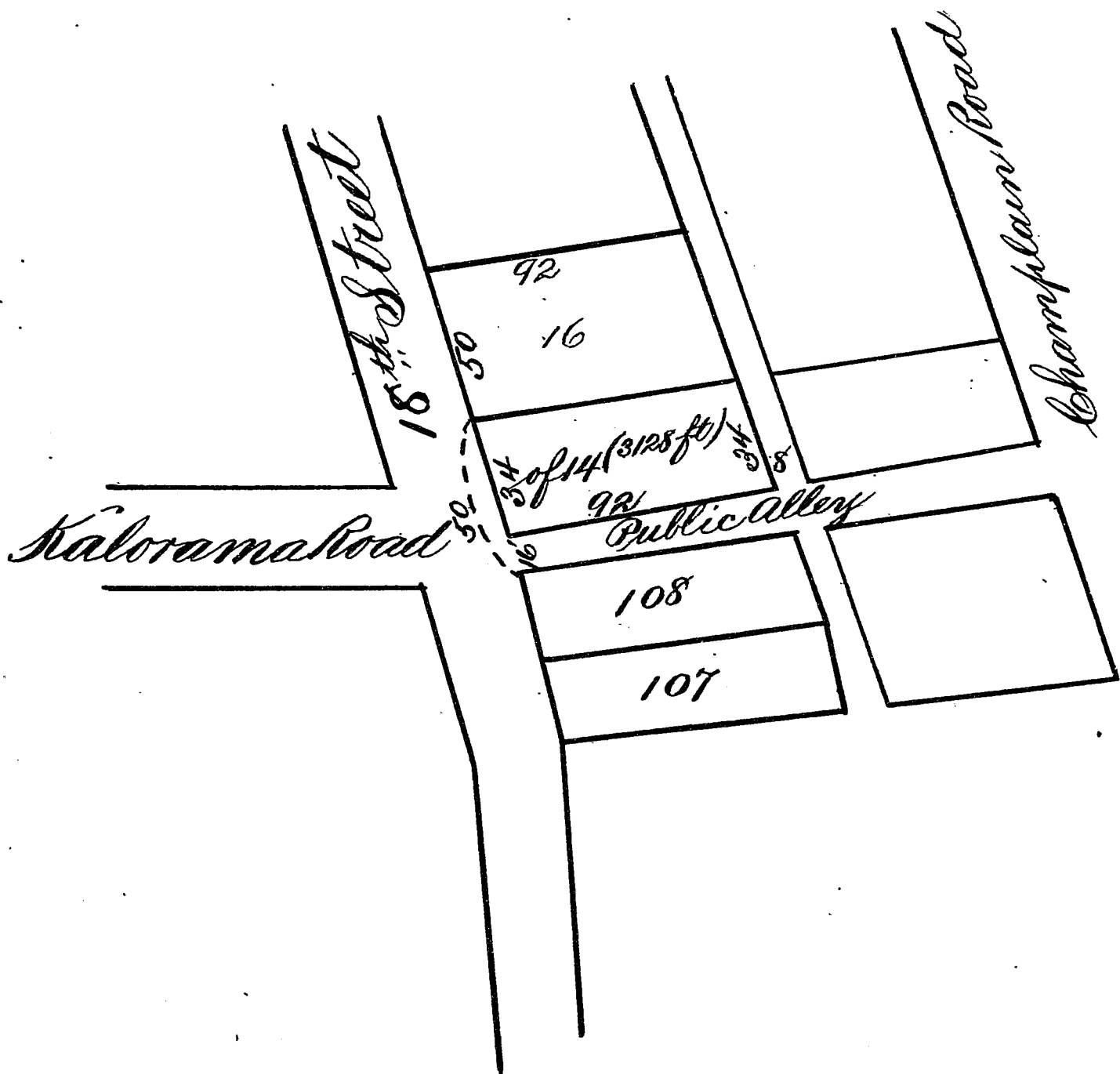
And for the reasons stated this respondent excepts to said award and objects to the confirmation thereof and respectfully prays the Court that it call the Jury together and instruct them to add to the award of damages to this respondent for said 34 feet of said Lot 34 the amount of benefits he has been required to pay and charge same to the District of Columbia, else set aside and vacate the award in its entirety and direct a new Jury to be summoned.

EDWARD A. FAY,  
By GEORGE C. GERTMAN, *Att'y.*



DEFENDANT'S EXHIBIT "G"

(Copy of the plat filed with the supplemental petition in Cause No. 686, showing property involved in this suit)





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## DEFENDANT'S EXHIBIT "F."

Filed Jun- 17, 1907. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a  
District Court.

District Court, No. 686.

*In re* EXTENSION OF KALORAMA ROAD, IN THE DISTRICT OF  
COLUMBIA.

This cause coming on to be heard upon motion of the petitioners, The Commissioners of the District of Columbia, to finally ratify and confirm the award filed herein on the 16th day of May, A. D. 1907, it is by the Court this 17th day of June, A. D. 1907, ordered and decreed that the exceptions filed herein by Edward A. Fay to said award be and the same are hereby overruled without prejudice, and that the verdict, awards and assessments of the Jury returned and filed herein on said 16th day of May, 1907, be and the same are hereby in all respects finally ratified and confirmed. And it is further ordered, adjudged and decreed, that the pieces or parcels of land mentioned and described in the said verdict be and the same are hereby condemned for the purpose of the extension of Kalorama Road from 18th street to Champlain street in the District of Columbia, for which this proceeding was instituted.

By the Court:

JOB BARNARD, *Justice.*

(Here follows Defendant's Exhibit "G," plat, marked p. 39.)

## EXHIBIT H.

*Docket Entries.*

Supreme Court of the District of Columbia, Holding a U. S. District Court for said District.

No. 668.

	Parties.	Action.	Libelant's proctor.
	Alley—Block 12, Meridian Hill and pt. block 8, Washington Heights—in Dist. of Col'a and plat.	To condemn . . . .	A. B. Duvall and H. L. Sinclair.
Date.	Proceedings.		
1905, July 12.	Petition—Comm'rs Dist. of Col'a—with and appearance description of lots—to be taken and plat.		
	" and plat.		
	Copy of plat—lodged with Surveyor of Dist. of Col.		
" "	13.	Persons interested—Appearance warned, M. 4, p. 392.	
" "	14.	Certification to and (31) copies of citation.	
" "	26.	Appearance of D. McPherson for self as owner.	
" "	31.	" " Luther H. Swartzell—p. p.—owner.	
" "	"	Owners—warning to appear ret'd, served owners as follows :	
	" L. A. Swartzell, Margaret A. O'Brian, John A. Saul, Frd'k W. Stone, John Tweedale, Charles W. King, Jr., Cornelius J. Cusack, Mary G. Cusack, Alice M. Welsh, Maria B. Dobyn, Am. Sec. & Tr. Co., Wash. Real Estate Co.		
" "	"	Proofs publ'n in Star, Post, Times & W. L. Reporter.	
" Aug. 1.	1.	Appearance of owner W. Real Est. Co. by præcipe.	
" "	"	" " " C. J. and M. A. Cusack filed.	
" "	10.	Jury to assess damages and benefits—Order app'g, M. 4, p. 398.	
" "	14.	" " " Order ret'd sum'd F. B. Metzertott, Jno. S. Swormstedt, Eugene J. Tighe, Jas. B. McLaughlin and Wm. P. Van Wickle.	
" "	"	Appearance of F. N. Sloan, owner of lot 24, bl'k 12, Meridian Hill.	
" "	15.	Appearance of Jno. A. Saal " N. ½ lot 23, bl'k 12.	
" "	"	Jury of view appointed, viz : Frank B. Metzertott, John S. Swormstedt, Eugene J. Tighe, James B. McLaughlin, and Wm. P. Van Wickle, M. 4, p. 401.	
" "	17.	Spa. ad test of Aug. 16, 1905, ret'd—Served Nos. 3, 4, 5, 6; not to be found Nos. 1 and 2.	
" "	19.	" ad test of Aug. 17, 1905, ret'd—Summ'd (2) behalf Pet'n.	
" Nov. 13.	13.	Verdict of jury filed.	
" Dec. 11.	11.	Objections of Maria B. Dobyns to verdict & appearance of Jos. D. Sullivan.	
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1905, Dec. 21.	21.	Motion to finally confirm verdict of jury	filed.
1906, Jan. 5.	5.	Objections overruled & verdict of jury confirmed, M. 4, p. 449	"
" May 25.	25.	Motion to vacate order of Jan. 5'', 1906, & to recommit	"
" June 1.	1.	Order vacating " " " & recommitting, M. 5, p. 107, 1 copy,	"
" "	21.	Spa. ad test of June 20'' returned served 1 for D. C.	
" "	22.	" " " 21 " " 1 for D. C.	
" July 27.	27.	Amended & supplemental verdict of jury, M. 5, p. 15, filed.	
" Sept. 20.	20.	" " " " " order confirming,	
		M. 5, pg. 175, filed.	
1907, Jan. 14.	14.	Release of lot 27, bl'k 12, Meridian Hill, from Chas. W. King, Jr., " to Bernard A. Duke	"
" Aug. 5.	5.	Petition of Edw. A. Fay for cancellation of assessment	filed.
" "	"	Rule on D. C. returnable Aug. 9'', M. 6, p. 230, copy 1,	"
" "	9.	Answer of District of Columbia	"
" "	"	Order denying petition of Edw. A. Fay, M. 6, p. 239	"

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Docket Entries.

Supreme Court of the District of Columbia, Holding a U. S. District Court for said District.

No. 686.

Parties.	Proceedings.	Action.	Libelant's proctor.
<i>In re</i> Extension of Kalorama Road from 18th Street to Champlain Street.			E. H. Thomas. Jas. F. Smith.
			Claimants' proctor.  W. C. Sullivan. Geo. C. Gertman.

Date.	Proceedings.	
1906, July 24.	Petition of Commissioners of D. C. & Exhibit No. 1	filed.
1907, Feb. 21.	Notice & order of publication copies (5), M. 5, p. 392	"
" " 21.	Amendment to petition, <i>fiat</i> of Barnard, J., & exhibit	"
" M'ch 18.	Notice of Feb. 21 returned served various owners	"
" " 18.	Marshal directed to summon a jury of 5, M. 5, p. 448	"
" " 19.	Appearance of W. C. Sullivan for L. A. Swartzell.	"
" " 20.	Proof of publication—Herald, \$39.00	"
" " " "	" " Times, \$56.70	"
" " " "	" " Star, \$33.00	"
" " " "	" " Law Reporter, \$5.88	"
" " 22.	Marshal's return as to summons of jury	"
" " 22.	Order accepting and directing jury, &c., M. 5, p. 453	"
" " 25.	Appearance of Geo. C. Gertman for Edw. Fay, order	"
" " 27.	<i>Spa. ad test.</i> of M'ch 26th returned served (3) for petitioners	"
" May 16.	Verdict & award of jury, M. 6, p. 53.	"
" June 15.	Exceptions to award of jury by Edward A. Fay	"
" " 17.	New parties made as co-trustees, M. 6, p. —.	"
" " "	Exceptions overruled. Verdict confirmed, M. 6, p. 145.	"
1908, Feb. 11.	Docket & index.	

43

Directions to Clerk for Preparation of Transcript of Record.

Filed February 24, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 49896.

EDWARD A. FAY, Plaintiff,  
*vs.*

THE DISTRICT OF COLUMBIA, Defendant.

The Clerk will please make a transcript of the following papers for the record on appeal in the above entitled cause.

- 1. Declaration.
- 2. Defendant's Pleas.

3. Joinder in issue to Pleas 1, 2 and 4.
4. Motion of plaintiff to strike out defendant's third plea.
5. Order striking out defendant's third Plea.
6. Note of issue and notice of trial.
7. Bill of Exceptions.
8. Judgment on finding for defendant and notice of appeal in open Court.
9. Bond filed and approved.
10. Designation of record.
11. Docket entries in District Court Nos. 668 and 686 (Exhibit "H").

GEO. C. GERTMAN,  
JOHN RIDOUT,  
*Attorneys for Appellant.*

44 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 43 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49896 At Law, wherein Edward A. Fay is Plaintiff and The District of Columbia, (a municipal corporation), is Defendant, as the same remains upon the files and of record in this court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of March, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1998. Edward A. Fay, appellant, *vs.* The District of Columbia, &c. Court of Appeals, District of Columbia. Filed Mar. 19, 1909. Henry W. Hodges, clerk.

